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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

17 Cr. 390 (ALC)

5 DAVID TAYLOR, VITO GALLICCHIO,
6 DANIEL GARCIA, NICHOLAS
7 AVICOLLI,

Defendants.

Conference

8 -----x

9 New York, N.Y.
10 October 11, 2017
11 10:11 a.m.

12 Before:

13 HON. ANDREW L. CARTER, JR.,

14 District Judge

15 APPEARANCES

16 JOON H. KIM
17 Acting United States Attorney for the
18 Southern District of New York
19 BY: KIERSTEN A. FLETCHER
20 Assistant United States Attorney

21 CHARLES F. CARNESI, ESQ.
22 Attorney for Defendant David Taylor

23 IRVING COHEN, ESQ.
24 Attorney for Defendant Vito Gallicchio

25 DONALDSON, CHILLIEST & McDANIEL, LLP
Attorneys for Defendant Daniel Garcia
BY: XAVIER R. DONALDSON, ESQ.

LEVITT & KAIZER
Attorneys for Defendant Nicholas Avicolli
BY: NICHOLAS G. KAIZER, ESQ.

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(Case called)

THE DEPUTY CLERK: Counsel, please state your appearance. For the government?

MS. FLETCHER: Good morning, your Honor. Kiersten Fletcher for the government.

THE DEPUTY CLERK: And for defendants?

MR. DONALDSON: Xavier R. Donaldson for Mr. Garcia. He's seated in the second row to the Court's left.

MR. KAIZER: Since we're going in reverse order, Nicholas Kaizer on behalf of Nicholas Avicolli, in the third row.

MR. CARNESI: Good morning, your Honor. Charles Carnesi appearing for Dr. David Taylor, who is seated in the courtroom.

MR. COHEN: And good morning, your Honor. Irving Cohen appearing for Vito Gallicchio, seated behind me.

THE COURT: Okay. Good morning.

What is the status of this matter?

MS. FLETCHER: Your Honor, the government has substantially completed its discovery production. We made a significant production on August 4th. In early September, the government obtained two additional search warrants for a couple of electronic devices that were seized when the defendants were arrested. Those search warrants and the accompanying affidavits were produced in early September, as

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1 were copies of the data that we were able to extract from those
2 devices. Two of them were locked iPhones that are currently
3 sitting in a lab trying to be cracked. If they are
4 successfully imaged, we'll produce those devices as they become
5 available, but as of now, the government has no additional
6 discovery to produce.

7 THE COURT: Okay. How does defense counsel wish to
8 proceed?

9 MR. DONALDSON: Your Honor, with the Court's
10 permission, I have spoken with defense counsel regarding the
11 discovery, and we need approximately four to six more weeks to
12 review the discovery and then to come back and provide the
13 Court -- or set a motion schedule. That being said, with the
14 Court's permission, we'd like November 27th to come back at
15 10:00 a.m.

16 THE COURT: Okay. That's fine.

17 Let me just get a sense of where we are with some
18 issues that were brought up the last time. There were some
19 issues brought up by counsel for Mr. Garcia regarding some
20 statements that were allegedly made by Mr. Garcia and whether
21 or not those statements were made after prompting by agents or
22 whether or not there was some discussion that was initiated by
23 Mr. Garcia, and counsel said that defense counsel and counsel
24 for the government were going to discuss that. Has that
25 discussion happened, and where are we with that?

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1 MS. FLETCHER: Your Honor, in the government's
2 discovery production on August 4th, we produced a report from
3 the agent who was present, where he gave a recitation of the
4 questions that were asked and the answers that were provided by
5 Mr. Garcia. So Mr. Donaldson has that. The government does
6 not intend to use any of those statements at a trial in this
7 case.

8 THE COURT: Okay. Thank you. Can I get a sense -- go
9 ahead, counsel.

10 MR. DONALDSON: I just want to say, from an
11 evidentiary standpoint, the government does not intend to use
12 those statements at all or the government does not intend to
13 use the statements in its direct? What does that mean exactly?

14 THE COURT: I will ask the government. My assumption
15 is that the government doesn't intend to use those statements
16 in its direct, but let me find out what the government's
17 position is. Maybe the government doesn't plan to use them in
18 any event, but let me find out.

19 MS. FLETCHER: Your Honor, the government doesn't plan
20 to use them in any event.

21 MR. DONALDSON: Thank you.

22 THE COURT: All right. So just to try to avoid any
23 issues coming up later, when the government says you don't plan
24 to use those in any event, is the government saying that you
25 are not going to use those in any event?

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1 MS. FLETCHER: I am not going to use those, your
2 Honor.

3 THE COURT: Okay. I'll give defense counsel the
4 adjournment that they're requesting, but let me get a sense as
5 to what sort of motions the defense anticipates, if at all, if
6 any, at this time.

7 MR. DONALDSON: Your Honor, speaking for Mr. Garcia,
8 we anticipate a suppression motion I believe involving
9 statements and possible other matters. I think we can
10 anticipate that.

11 THE COURT: And these would be statements other than
12 the ones we've just been talking about?

13 MR. DONALDSON: Possibly. I have to make sure. I'm
14 not speaking definitively, but I believe there are suppression
15 issues that Mr. Garcia would be moving to suppress.

16 THE COURT: All right. Other defense counsel?

17 MR. KAIZER: Don't hold us to it, Judge, but there's
18 affidavits in support of search warrants for my client's
19 pharmacy, and we're going through them now. Both the issuance
20 and execution of the warrants we're going to look into, Judge.

21 THE COURT: Okay. Anyone else?

22 MR. CARNESI: As to Dr. Taylor, your Honor, there were
23 also search warrants executed and statements that were taken,
24 and we're reviewing those.

25 MR. COHEN: Likewise, your Honor.

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1 THE COURT: All right. Okay. I take it that
2 November 27th at 10:00 is a time that works for all counsel
3 and works for me as well? I take it you've spoken to my deputy
4 about that date and time?

5 MR. DONALDSON: Yes, I did, your Honor.

6 THE COURT: Go ahead.

7 MS. FLETCHER: Your Honor, just a point of
8 clarification so that we can be sure to be prepared for that
9 conference. I understand your Honor doesn't expect motions to
10 be filed by that date, but will your Honor then expect defense
11 counsel to definitively state whether they have a motion and
12 provide a date by which time it will be filed?

13 THE COURT: Yes.

14 MS. FLETCHER: Okay. Thank you.

15 THE COURT: The plan is that on November 27th no
16 motions need to be filed by that date, but by November 27th
17 defense counsel should be in a position to let me know one way
18 or the other whether they plan to file motions, and if so, we
19 will set a motion schedule, and if no motions are going to be
20 filed, then we should start thinking about setting a trial
21 date.

22 MS. FLETCHER: Okay. Thank you, your Honor.

23 THE COURT: Again, discovery is voluminous, and it may
24 be defense counsel may need still more time to review
25 discovery, but at that point we should be prepared to set a

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1 trial date. Based on the representations made by counsel,
2 again, you should be prepared to set a trial date if defense
3 counsel have decided they're not making any motions. If
4 defense counsel are making motions, we'll set a motion schedule
5 then. Based on representations made, I find it's in the
6 interests of justice and the interests of all the defendants to
7 exclude time under the Speedy Trial Act from today's date until
8 November 27th. I further find that the interests of justice
9 and the interests of the defendants outweighs the public's
10 interest in a speedy trial, and I will enter an order to that
11 effect.

12 Is there anything else from the government?

13 MS. FLETCHER: No. Thank you, your Honor.

14 THE COURT: Anything else from the defense?

15 ALL COUNSEL: No, your Honor. Thank you, Judge.

16 THE COURT: Okay. We're adjourned.

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